

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)
AVERAGE WHOLESALE PRICE)
LITIGATION)
_____)

THIS DOCUMENT RELATES TO:)

MDL No. 1456

Master File No. 01-12257-PBS

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Abbott Laboratories,)
Inc., Civil Action No. 06-11337-PBS;)

Subcategory Case No. 06-11337 -PBS

Hon. Patti B. Saris

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Dey, Inc., et al., Civil)
Action No. 05-11084-PBS; and)

Magistrate Judge Marianne B. Bowler

United States of America ex rel. Ven-a-Care of)
the Florida Keys, Inc. v. Boehringer Ingelheim)
Corp., et al., Civil Action No. 07-10248-PBS)

United States ex rel Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 09-CV-10547)

United States ex rel Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 00-10698)

California ex rel. Ven-A-Care of the Florida)
Keys, Inc. v. Schering Corporation, et al.,)
Civil Action No. 03-CV-11226)

**SEPTEMBER 2009 STATUS REPORT OF THE UNITED STATES AND THE
RELATOR VEN-A-CARE OF THE FLORIDA KEYS**

The United States of America (“United States”) and Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care” or the “Relator”), Plaintiffs, through their undersigned counsel, respectfully file the attached Status Report for September 2009, in accordance with the Court’s June 17, 2004, Procedural Order.

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc., v. Abbott Laboratories, Inc. MDL Docket Number 06-11337 Original Jurisdiction: U. S. District Court Southern District of Florida		
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket # 6096 and #6097 and Subcategory Docket #218 and #219) Motion for Sanctions and for a Finding of Spoliation and Memorandum of Law by Abbott Laboratories, Inc</p> <p>(Master Docket # 6270 and Subcategory Docket #281) United States Memorandum in Opposition re 6096 Abbott Lab's Motion for Sanctions and for a Finding of Spoliation and 6109 Dey's Motion for Sanctions and for a Finding of Spoliation</p> <p>(Master Docket #6271 and Subcategory Docket #282) Motion by the United States for Leave to Exceed Page Limits</p> <p>(Master Docket # 6157 and Subcategory Docket #225) Motion for Extension of Time to July 15, 2009 to Respond to Defense Motions for a Finding of Spoliation and for Sanctions by United States</p> <p>(Master Docket #6266 and Subcategory Docket #279) Unopposed Motion for Extension of Time to July 20, 2009 to Respond to Defense Motions for a Finding of Spoliation and for Sanctions by United States</p> <p>(Master Docket #6368 and 6369 and Subcategory Docket #360 and 361) Consent Motion for Leave to File a Reply Memorandum by Dey, Inc., Dey, L.P., Dey, L.P., Inc. and by Abbott Laboratories Inc. With Attached Reply</p>	

2.	<p>(Master Docket # 6175, #6177, #6188 and #6189 and Subcategory Docket #233, #235, #243 and #244) Motion in Limine To Exclude Certain Opinions Proffered by Plaintiffs' Expert Mark G. Duggan, Ph.D., Memorandum of Law, Statement of Material Facts and Affidavit by Abbott Laboratories, Inc.</p> <p>(Master Docket # 6176 and Subcategory Docket #224) Motion for Leave to File Oversized Brief in Support of Motion in Limine by Abbott Laboratories, Inc.</p>	
3.	<p>(Master Docket # 6179, #6183, #6187 (refiled as #6189) and #6216 and Subcategory Docket #250, #252 and #268) Motion to Dismiss for Lack of Jurisdiction Under the Public Disclosure Bar, Memorandum of Law and Statement of Material Facts by Abbott Laboratories, Inc.</p>	
4.	<p>(Master Docket #6185, #6186, #6187, #6188, #6189 and #6211 and Subcategory Docket #241, #242, #243, #244 and #262) Motion for Partial Summary Judgment, Declarations, Memorandum of Law and 56.1 Statement by Abbott Laboratories, Inc.</p> <p>(Master Docket #6302, #6305, #6308, #6312, #6314, #6318, #6319, #6320, #6322, and #6323 and Subcategory Docket #316, #317, #318, #321, #322, #323, #324, #325, #326 and #327) United States Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Abbott's Motion and Response to Abbott's Statement of Facts</p> <p>(Master Docket #6310, #6316 and #6317 and Subcategory Docket #308, #312 and #314) United States Memorandum of Law, Rule 56.1 Statement of Facts and Declaration with Exhibits <i>Common</i> to All Defendants</p>	10/20/2009 at 2:00 PM

<p>4. Cont'd</p>	<p>(Master Docket 6415, 6440, 6448, 6455, 6456, 6464 and 6465 and Subcategory Docket 393, 416, 423, 424, 425) Abbott's Reply in Support of its Rule 56.1 Statement, Memorandum of Law in Opposition to US Motion and in Reply to US Opposition to its Motion, Rule 56.1 Statement of Additional Facts, Response to US Rule 56.1 Statement and Declaration with Additional Exhibits 1 to 140</p> <p>(Master Docket 6429, 6438, 6439, 6447, 6449, 6450, 6451, 6452, 6453, 6454 and 6459 and Subcategory Docket 409, 414 and 415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p>	<p>10/20/2009 at 2:00 PM</p>
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United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al., MDL Docket No. 05-11084-PBS Original Jurisdiction: United States District Court, District of Massachusetts		
Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket # 5725, #5726 and #5727 and Subcategory Docket #89, #90 and #91) Motion to Compel the Production of Documents and supporting Memorandum and Declaration by Dey, Inc. [relating to the Georgia Department of Community Health]</p> <p>(Subcategory Docket #160) First Opposition re Motion to Compel the Production of Documents filed by Georgia DCH</p> <p>(Master Docket 5969 and Subcategory Docket #191) Motion for Leave to File Reply Memorandum of Law by Dey</p>	9/14/09
2.	<p>(Master Docket # 5728, #5729 and #5730 and Subcategory Docket #92, #93 and #94) Motion to Compel Luis Cobo and Ven-A-Care of the Florida Keys, Inc. to Produce Documents and supporting Memorandum and Declaration by Dey, Inc.</p> <p>(Master Docket #5780 and Subcategory Docket #120) Assented to Motion for Extension of Time to December 30, 2008 to File Response/Reply</p> <p>(Master Docket #5806 and Subcategory Docket #134) Assented to Motion for Extension of Time to January 9, 2009 to Respond to Dey, Inc.'s Motion to Compel Luis Cobo and Ven-A-Care of the Florida Keys, Inc. to Produce Documents by Luis E. Cobo.</p> <p>(Master Docket #5865 and Subcategory Docket #163) Motion for Leave to File a Reply Memorandum</p>	9/14/09

3.	<p>(Master Docket # 5776, #5777 and #5778 and Subcategory Docket #116, #117 and #118) Motion to Compel Production of Documents Responsive to Subpoena and supporting Memorandum and Declaration by Dey, Inc. [re Delaware, North Carolina, Oklahoma, and South Dakota]</p> <p>(Master Docket #5808 and Subcategory Docket #136) Memorandum in Opposition by United States</p> <p>(Master Docket #5851 and Subcategory Docket #156) Motion for Leave to File a Reply in Further Support of Motion filed by Dey</p> <p>(Master Docket #5852 and Subcategory Docket #157) Objection to (5776 in 1:01-cv-12257-PBS) Motion to Compel Production of Documents Responsive to Subpoena, filed by Oklahoma Health Care Authority.</p> <p>(Master Docket #5922 and Subcategory Docket 188) Notice of Filing by the State of Delaware of decision by the Delaware United States District Court quashing the subpoena.</p>	9/14/09
4.	<p>(Master Docket #6109, #6110 and #6111 and Subcategory Docket #222, #223 and #224) Motion for Sanctions and for a Finding of Spoliation by Dey Inc., Memorandum of Law and Declaration</p> <p>(Master Docket # 6270 and Subcategory Docket #281) United States Memorandum in Opposition re 6096 Abbott Lab's Motion for Sanctions and for a Finding of Spoliation and 6109 Dey's Motion for Sanctions and for a Finding of Spoliation</p>	
5.	<p>(Master Docket #6170 and Subcategory Docket #230) Joint Motion To Establish a Briefing Schedule for Summary Judgment</p>	

6.	<p>(Master Docket #6174 and Subcategory Docket #232) Motion to Seal Document re: Unredacted Declaration of W. David Bradford, PH.D. and Supplemental Figures A-K to the Declaration of Lauren J. Stiroh in Support of Motion for Partial Summary Judgment by Dey</p>	
7.	<p>(Master Docket #6178, #6180, #6181, #6182, #6184, #6190, #6194 and #6204 and Subcategory Docket #236, #237, #238, #239, #240, #245, #249 and #264) Motion for Partial Summary Judgment, Affidavits, Declarations, Memorandum of Law and 56.1 Statement by Dey</p> <p>(Master Docket 6295, 6296, 6298, 6301, 6303, 6311 and 6331 and Subcategory Docket #301, 302, 303, 304, 305, 307, 312, 328, 329 and 336) United States Cross- Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Motion and Response to Dey's Statement of Facts</p> <p>(Master Docket #6310, #6316 and #6317 and Subcategory Docket #308, #312 and #314) United States Memorandum of Law, 56.1 Statement of Facts and Declaration with Exhibits <i>Common</i> to All Defendants</p> <p>(Master Docket 6429, 6438, 6439, 6447, 6449, 6450, 6451, 6452, 6453, 6454 and 6459 and Subcategory Docket 409, 414 and 415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p> <p>(Master Docket 6426, 6428, 6430, 6432 and 6445 and Subcategory Docket 406, 408, 411, 412, and 422) Dey Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 220 to 335)</p>	10/20/2009 at 2:00 PM

8.	(Master Docket #6206, #6208 and #6209 and Subcategory Docket #265, #266 and #267) Motion to Dismiss the Relator's Complaints For Lack of Subject Matter Jurisdiction, Memorandum and Declaration	
9.	(Master Docket 6350 and Subcategory Docket 347) Joint Motion To Establish Page Limits for the Remainder of the Parties' Summary Judgment Briefing	
10.	<p>(Master Docket #6384 and Subcategory Docket #368) Motion for Leave to Participate in the Depositions of Carolyn Helton and Robin Kreush Stone by Dey, Inc. <i>[See Master Docket #6328, #6329 and #6330 and Subcategory Docket #333, #334 and #335 filed by Roxane]</i></p> <p>(Master Docket #6461 and Subcategory Docket #426) United States' Memorandum in Opposition to Dey's Motion to Participate</p>	

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp., et al., MDL Docket No. 07-10248-PBS Original Jurisdiction: United States District Court, District of Massachusetts		
Item No.	Pending Motions	Hearing Date
1.	(Master Docket #5672 and Subcategory Docket #63) United States Motion for Clarification of Order By Magistrate Judge Dated October 29, 2008. [This pleading was also docketed as Original Docket #92 (in Case No. 07-10248-PBS)]	
2.	(Master Docket # 5697 and #5698 and Subcategory Docket #78 and #79) Motion to Compel Production of Documents and Rule 30(b)(6) Deposition of Kansas Health Policy Authority and Memorandum of Law in Support thereof by Boehringer Ingelheim Pharmaceuticals, Inc., and Affidavit of John W. Reale in Support [These pleadings were also docketed as Original Docket #96 and #97 (in Case No. 07-10248-PBS)]	9/14/09
3.	(Master Docket # 5678 and 5679 and Subcategory Docket #68 and #69) United States' Motion for Protective Order Regarding the Roxane Defendants' Rule 30(b)(6) Notice and Memorandum of Law (Master Docket #5712 and Subcategory Docket #84) Opposition filed by Boehringer Ingelheim Pharmaceuticals, Inc.	9/14/09
4.	(Master Docket #5898 and #5899 and Subcategory Docket #178 and #179) United States' Motion to Compel Testimony via 30(b)(6) Witness of Roxane and Memorandum (Master Docket #5945 and Subcategory Docket #187) Opposition filed by Boehringer Ingelheim Pharmaceuticals, Inc. (Master Docket #5955 and Subcategory Docket #190) United States Motion for Leave to File Reply (Unopposed)	9/14/09

5.	<p>(Master Docket #6191, #6192, #6193, #6214 and #6215 and Subcategory Docket #246, #247, #248 and #263) Motion for Summary Judgment, Memorandum, Declaration and 56.1 Statement by Boehringer Ingelheim Corp., Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>(Master Docket #6410, #6411, #6412 and #6413 and Subcategory Docket #390, #391, #394 and #397) United States Memorandum in Opposition, Response to Statement of Facts and Affidavit in Support with Exhibits</p>	10/20/2009 at 2:00 PM
6.	<p>(Master Docket #6196, #6197 and #6198 and Subcategory Docket #253, #254 and #255) Motion to Dismiss for Lack of Jurisdiction Under the Public Disclosure Bar, Memorandum and Declaration by Roxane Laboratories, Inc, Boehringer Ingelheim Corp., Boehringer Ingelheim Roxane, Inc., Boehringer Ingelheim Pharmaceuticals, Inc.</p>	

7.	<p>(Master Docket #6199, #6200, #6201, #6202 and #6207 and Subcategory Docket #256, #257, #258, #260 and #261) Motion for Summary Judgment by Roxane Laboratories</p> <p>(Master Docket #6290, #6291, #6293, #6294, #6306, #6307, #6309, #6313, #6315, #6327 and #6334 and Subcategory Docket #297, #298, #299, #300, #309, #310, #311, #313, #315, #332 and #338) United States Cross-Motion for Summary Judgment, Memorandum of Law, Statement of Facts, Declaration with Exhibits and Response to Roxane's Motion and Response to Roxane's Statement of Facts</p> <p>(Master Docket #6310, #6316 and #6317 and Subcategory Docket #308, #312 and #314) United States Memorandum of Law, 56.1 Statement of Facts and Declaration with Exhibits <i>Common</i> to All Defendants</p> <p>(Master Docket 6424, 6425, 6427, and 6431 and Subcategory Docket 404, 405, 407, and 410) Roxane Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Reply in Support of its Rule 56.1 Statement of Facts, and Declaration with Additional Exhibits 220 to 335)</p> <p>(Master Docket 6429, 6438, 6439, 6447, 6449, 6450, 6451, 6452, 6453, 6454 and 6459 and Subcategory Docket 409, 414 and 415) Defendants Dey, Abbott and Roxane <i>Common</i> Memorandum of Law in Opposition to US Motion for Summary Judgment, Response to US Rule 56.1 Statement, Rule 56.1 Statement of Additional Facts, Declaration with Additional Exhibits 1 to 215 and Declaration with Additional Exhibits 1 to 12</p>	10/20/2009 at 2:00 PM
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8.	<p>(Master Docket #6254, #6255 and #6256 and Subcategory Docket #274, #275 and #276) Motion for Sanctions and for a Finding of Spoliation by Roxane Laboratories, Inc, Boehringer Ingelheim Corp., Boehringer Ingelheim Roxane, Inc., Boehringer Ingelheim Pharmaceuticals, Inc.</p> <p>(Master Docket #6388 and 6389 and Subcategory Docket #370 and 371) United States Memorandum in Opposition to Motion for Sanctions and for a Finding of Spoliation and Supporting Affidavit</p>	
9.	<p>(Master Docket #6328, #6329 and #6330 and Subcategory Docket #333, #334 and #335) Motion to Take Deposition from Carolyn Helton and Robin Kreush Stone by Boehringer Ingelheim Pharmaceuticals, Inc., Roxane Laboratories, Inc, Boehringer Ingelheim Corp., Boehringer Ingelheim Roxane, Inc., Memorandum of Law and Affidavit</p> <p>(Master Docket #6355 and Subcategory Docket #350) United States' Memorandum in Opposition</p> <p>[(Master Docket #6384 and Subcategory Docket #368) Motion for Leave to Participate in the Depositions of Carolyn Helton and Robin Kreush Stone by Dey, Inc.</p> <p>(Master Docket #6461 and Subcategory Docket #426) United States' Memorandum in Opposition to Dey's Motion to Participate]</p>	

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc., v. Schering
MDL Docket Number 06-11337
Civil Action No. 09-CV-10547
Civil Action No. 00-10698

Original Jurisdiction: U. S. District Court Southern District of Florida

Item No.	Pending Motions	Hearing Date
1.	<p>(Master Docket #6173 and Subcategory Docket #231) The Parties' Joint Motion for a Scheduling Conference by Schering-Plough Corporation, Schering Corporation, Warrick Pharmaceuticals Corporation and Ven-a-Care of the Florida Keys</p> <p>(Master Docket #6283 and Subcategory Docket #292) United States' Amended Objection to the Proposed Settlement Between Schering-Plough Corporation, Schering Corporation, Warrick Pharmaceuticals Corporation and Ven-a-Care of the Florida Keys, and Proposed Order</p> <p>(Master Docket #6285 and Subcategory Docket #293) Preliminary Response by Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation to the United States's Objection to the Proposed Settlement and Proposed Order</p>	August 10, 2009 at 4:00 PM
2.	<p>(Master Docket #6275 and #6276 and Subcategory Docket #288 and #289) Commonwealth of Massachusetts' Motion to Intervene for the Limited Purpose of Objecting to the Ven-a-care/Schering/warrick Settlement Agreement</p> <p>(Master Docket #6364 and Subcategory Docket 358) Joint Response to Motion to Intervene (6275/288)</p> <p>(Master Docket #6458 and Subcategory Docket #396) Corrected Reply Memo by Commonwealth of Massachusetts</p>	
3.	<p>(Master Docket #6288 and #6289 and Subcategory Docket [not filed]) The City of New York and New York Counties' Motion to Intervene For the Limited Purpose of Objecting to the Ven-a-Care/Schering/Warrick Proposed Settlement and Memorandum of Law</p>	

4.	<p>(Master Docket #6273 and Subcategory Docket #284) Motion to Amend by Ven-A-Care of the Florida Keys, Inc.</p> <p>(Master Docket #6286 and Subcategory Docket #294) Consent to Motion by Schering-Plough Corporation, Warrick Pharmaceuticals Corporation, Schering Corporation, Schering-Plough Corporation</p> <p>(Master Docket #6292 and Subcategory Docket #296) Consent Amended Complaint</p>	
5.	<p>(Master Docket #6358 and Subcategory Docket #353) Joint Motion for Leave to File on Overlength Brief in Support of Motion for Approval of Settlement by Schering-Plough Corporation</p>	
6.	<p>(Master Docket #6359, 6360, 6361, 6362 and 6363 and Subcategory Docket #352, 354, 355, 356 and 357) Joint Motion and Memorandum for Settlement Approval Between California, Florida, and Relator Ven-A-Care of the Florida Keys on Behalf of Itself and the United States and Schering-Plough, Schering, and Warrick with Supporting Affidavits of Addanki, Trent and Jones</p> <p>(Master Docket #6457 and Subcategory Docket #377) Corrected Opposition filed by Commonwealth of Massachusetts</p> <p>(Master Docket #6414 and Subcategory Docket #392) Opposition filed by United States</p> <p>(Master Docket #6435 and 6436 and Subcategory Docket #) Opposition filed by The City of New York and Captioned New York Counties and Supporting Declaration</p>	

Respectfully Submitted,

For the United States of America,

MICHAEL K. LOUCKS
ACTING UNITED STATES ATTORNEY

/s/ George Henderson
George B. Henderson, II
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
Suite 9200, 1 Courthouse Way
Boston, MA 02210
Phone: (617) 748-3272
Fax: (617) 748-3971

JEFFREY H. SLOMAN
ACTING UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

/s/ Mark Lavine
Mark A. Lavine
Ann St.Peter-Griffith
Special Attorneys for the Attorney General
99 N.E. 4th Street, 3rd Floor
Miami, FL 33132
Phone: (305) 961-9003
Fax: (305) 536-4101

TONY WEST
ASSISTANT ATTORNEY GENERAL

/s/ Justin Draycott
Joyce R. Branda
Daniel R. Anderson
Renée Brooker
Justin Draycott
Rebecca Ford
Gejaa T. Gobena
Civil Division
Commercial Litigation Branch
P. O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 307-1088
Fax: (202) 307-3852

For the relator, Ven-A-Care of the Florida
Keys, Inc.,

/s/ James Breen
James J. Breen
Alison W. Simon
The Breen Law Firm, P.A.
3350 S.W. 148th Avenue, Suite 110
Miramar, FL 33027
Tel: (954) 874-1635
Fax: (954) 874-1705

September 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above
**"SEPTEMBER 2009 STATUS REPORT OF THE UNITED STATES AND THE
RELATOR VEN-A-CARE OF THE FLORIDA KEYS"** to be served on all counsel of record
via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a
copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Mark Lavine

Dated: September 1, 2009